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January 16, 2003

Thomas J. Krueger, Esq.  
Associate Regional Counsel (C-14J)  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, Illinois 60604-3590

**RE: Ellsworth Industrial Park/Tricon Industries, Inc.**

Dear Mr. Krueger:

On behalf of Tricon Industries, Inc. ("Tricon"), this letter will supplement our previous correspondence of September 17, 2002 and December 16, 2002, and will also address some new issues that have arisen since that time. You indicated that you had forwarded our December 16, 2002 letter to the appropriate people at the United States Environmental Protection Agency ("USEPA") and Weston Solutions, Inc. ("Weston"), and would be getting back to us regarding the concerns addressed by Tricon in that correspondence. As previously stated, Tricon specifically denies any wrongdoing or liability in this matter, but remains committed to working toward a fair and final resolution without resort to litigation.

On December 17, 2002, Tricon joined other potentially responsible parties ("PRPs") in submitting the good faith offer ("GFO") for the purpose of resolving concerns regarding the presence of chlorinated solvents in soil and groundwater in and around Ellsworth Industrial Park ("Ellsworth"). Although Tricon denies any wrongdoing or liability, Tricon participated in the GFO because the USEPA had consistently told Tricon and the other PRPs that it would not entertain separate negotiations with individual parties regardless of their innocence because such negotiations would undermine the group effort. Furthermore, the USEPA warned the PRPs that a party's failure to participate in the group effort would subject that party to the full arm of the Government's authority. Indeed, the USEPA promised participating parties that it would vigorously pursue any PRP who did not cooperate with the group effort.

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U.S. Environmental Protection Agency

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Contrary to the USEPA's stated position, you have now informed the PRPs that the USEPA is, in fact, negotiating with Suburban ("Suburban") on an individual basis.<sup>1</sup> You have also informed us that you do not intend to pursue Suburban because it is merely a property owner who did not contribute to the contamination. Although this distinction has never before shielded current property owners from CERCLA liability, the USEPA, in this instance, seems to be going out on a limb to eliminate yet another PRP when the USEPA should be seeking to add new PRPs and has, in fact, promised to do so.

The USEPA's willingness to give Suburban a "pass" seems arbitrary and capricious, especially when viewed alongside the USEPA's unabashed targeting of Tricon with respect to the Janes Avenue Property. Tricon leases the Janes Avenue Property – it does not own the Property. Tricon has never used chlorinated solvents at the Janes Avenue Property, and certainly has never dumped any there. Unlike owners such as Suburban, Tricon, as an innocent lessee, has absolutely no liability for the Janes Avenue Property because Tricon is neither an owner or operator under CERCLA.

Moreover, since our last correspondence, we have reviewed the report regarding Principal Manufacturing Company's improper disposal of hazardous material. Although the report is dated December 16, 2002, the information contained in the report was clearly known to the USEPA and to Weston at the time the Phase II Site Assessment Report, Ellsworth Industrial Park, Downers Grove, DuPage County, Illinois, TDD No.: 0111-010, Document Control No.: 195-2A-ACAT, August 19, 2002 ("Weston Report") was issued. In fact, during our meeting of November 13, 2002, Steve Faryan acknowledged that the "whistleblower" information documented in the December 16 report was the sole reason the USEPA tested the Janes Avenue Property in the first place.

It is inconceivable that this critical information regarding the *known* source of the contamination at the Janes Avenue Property was not included in the Weston Report. Instead, the Weston Report besmirched Tricon with the contamination, and even went so far as to name Tricon as a "probable source" based solely on contamination at the Janes Avenue Property that the USEPA *knew* was not caused by Tricon! As a result of this glaring error, Tricon has been severely damaged, both within the PRP Group and throughout the Downers Grove Community.

As you are aware, the structure of the GFO contemplates that each participant will handle and fund its own Remedial Investigation and Feasibility Study ("RI/FS") for its own parcel, and will also reach various agreements on issues regarding allocation. As Tricon is an innocent lessee with no role in the contamination at the Janes Avenue Property,

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<sup>1</sup> You also informed us that the USEPA is talking separately with the Downers Grove Sanitary District. As you are aware, Tricon and the other PRPs are very troubled by this development.

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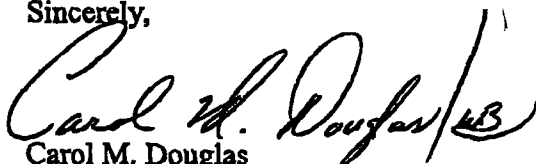
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Tricon has no liability whatsoever for conducting an RI/FS at the Janes Avenue Property, and has neither offered nor agreed to fund an RI/FS at the Janes Avenue Property. Although Tricon was afforded little choice but to participate in the GFO and to accept a structure based on individual parcels, Tricon insisted that its participation in the GFO be conditioned "on those participants and the current owner timely resolving the issue of allocation of the costs of the GFO." GFO at p. 4, para. 2. From Tricon's perspective, "allocation of the costs" with respect to the Janes Avenue Property means that Tricon's portion is zero.

Given (1) the structure of the GFO based on parcels of land, (2) the USEPA's knowledge that Tricon is simply an innocent lessee at the Janes Avenue Property with no liability under CERCLA, (3) the Weston Report's untrue and unfair identification of Tricon with the contamination at the Janes Avenue Property; (4) the USEPA's stated willingness to settle with innocent owners notwithstanding their liability under CERCLA, and (5) the looming threat of homeowner, state and contribution claims, it is imperative that the USEPA, in addition to correcting the misinformation already disseminated about Tricon, give Tricon a carved-out settlement, complete with covenants not to sue and contribution protection, with respect to the Janes Avenue Property. This action by the USEPA would help to resolve, in a fair and timely manner, the primary allocation issue upon which Tricon's participation in the GFO is conditioned, and is the only way to ensure Tricon's ultimate participation in the GFO should the PRP Group and the USEPA reach agreement.

Tricon would like to meet with you to discuss this settlement as soon as possible. Thank you for your attention to this matter, and I look forward to hearing from you.

Sincerely,



Carol M. Douglas  
Ungaretti & Harris

Enclosures

cc: John J. Winkler, Vice President - Internal Operations  
Tricon Industries, Inc.

Patricia A. Rooney  
Ungaretti & Harris